PETITION OF

COLUMBIA GAS OF VIRGINIA, INC. **CASE NO. PUE-2002-00070**

For a Declaratory Judgment

REPORT OF HOWARD P. ANDERSON, JR., HEARING EXAMINER

August 1, 2002

On January 17, 2002, Columbia Gas of Virginia, Inc. ("Columbia" or "Company") filed a petition for declaratory judgment ("Petition") with the State Corporation Commission ("Commission") requesting the Commission to declare, *inter alia*, that the Company has authority under Rate Schedules TS-1 and TS-2 to assess penalties and charges against customers who failed to comply with certain balancing service restrictions issued by the Company during the winter of 2000-01. Specifically, the Company requested that the Commission declare Columbia has authority under Rate Schedule TS-1 or Rate Schedule TS-2 to: (i) issue balancing service restrictions; (ii) restrict Columbia's customers' access to banked natural gas quantities; (iii) charge customers a Gas Daily commodity price for gas consumed in excess of their authorized daily volume during a balancing service restriction; (iv) assess a penalty of $10.00 per Mcf for all gas used in excess of 102 percent of the customer's authorized daily volumes during a balancing service restriction; and (v) not waive penalties assessed against "habitual" offenders of its balancing service restrictions. The Company stated that a declaratory judgment will afford relief to it and to its customers who received service from Columbia during the winter of 2000-01, and resolve any uncertainty regarding the Company's as well as customers' rights under Rate Schedules TS-1 and TS-2. Columbia further stated no other adequate remedy is available to it.

On February 7, 2002, the Commission issued a Preliminary Order docketing the proceeding, requiring the Company to give public notice of its Petition, inviting interested parties to file responsive pleadings to the Petition or request a hearing on the issue, and assigning a Hearing Examiner to conduct further proceedings. The Order permitted Commission Staff to participate in the proceedings to the same extent as permitted by Rule 5 VAC 5-20-80 D of the Commission's Rules of Practice and Procedure. The Commission received numerous responses and requests for hearing.

On March 11, 2002, the Virginia Industrial Gas Users' Association ("VIGUA") filed an Answer to the Company's Petition, a Cross-Petition for Declaratory Judgment ("Cross Petition"), and a Request for Hearing. In its Cross Petition, VIGUA requested that the Commission declare Columbia in violation of §§ 56-234, 56-236, and 56-237 of the Code of Virginia for failure to abide by its tariffs. VIGUA further requested Columbia be required to refund sums it received as a result of penalties and improper charges, be found liable for any other damages incurred by VIGUA members as a result of violation of its tariff, and be enjoined from disregarding its filed tariffs in the future.

By Hearing Examiner's Ruling of April 3, 2002, a procedural schedule was established and a hearing date of July 11, 2002, was set.

On May 13, 2002, VIGUA also filed a Motion for Summary Judgment arguing that the issues in this case involve a legal determination based on admitted facts.

By Hearing Examiner's Ruling of May 22, 2002, oral argument was scheduled for May 24, 2002, on motions filed by the parties. Following the oral argument, VIGUA's Motion for Summary Judgment was denied[1] and the procedural schedule revised.

At Columbia's request, a prehearing conference was held on July 8, 2002, at which time Columbia set forth its proposal for settlement of the issues involved in this case. Following a recess, Columbia, Commission Staff, and the parties advised the Examiner they had reached a preliminary agreement with the details to be agreed upon by July 11, 2002, the scheduled hearing date.

The hearing on Columbia's Petition and VIGUA's Cross Petition was convened on July 11, 2002. Counsel appearing were Edward L. Flippen for Columbia; Louis Monacell and Brian Greene for VIGUA; Guy T. Tripp, III, and Renata Manzo for Stand; and Sherry Bridewell and Wayne N. Smith for Commission Staff. Proof of service was made a part of the record. There were no public witnesses. Transcripts of the hearing and other proceedings in this case are filed with this Report.

SUMMARY OF THE HEARING RECORD

Effective December 6, 2000, Columbia implemented an order placing banking and balancing restrictions ("flow orders")[2] on its transportation customers served under Rate Schedules TS-1 and TS-2 and subscribing to the Company's banking and balancing service. Pursuant to these flow orders, transportation customers were required to purchase and deliver to the Company's city gate an amount of gas which when coupled with gas available from Columbia's standby service, was to equal the customer's usage on that day. Thus, transportation customers were restricted from using their banked gas and had to purchase gas on the spot market, often at higher prices than those paid for their banked gas.

Effective January 17, 2002, Columbia modified its flow orders to provide transportation customers limited daily access to their banked gas at the rate of ten percent of daily delivered supply. This flow order modification remained in effect through January 31, 2001.

Further, Columbia assessed a penalty on transportation customers whose daily consumption exceeded their daily nominated supplies, an amount of $10.00 per Mcf for all gas used in excess of their nominated daily volumes. Because customers were denied access to their banked gas, customers whose daily deliveries fell short of their required gas quantities were deemed to have consumed gas from the Company at the tariffed rate. Further, Columbia imposed $0.35/Mcf excess

[1] Tr. 39.
[2] The flow orders are also referred to as Balancing Service Restrictions ("BSR's").

bank penalties on customers who maintained bank balances in excess of their prescribed bank tolerance levels.

The Company imposed the flow orders due to significantly colder than normal weather during November and December of 2000. Transportation customers were collectively consuming more gas from their banks than they were delivering to the system. By early December, the Company concluded that if the use of storage supplies continued at the current rate, the Company would have insufficient storage gas to supply its customers through the winter. The effect of the flow orders was to improve the gas supply situation by requiring the transportation customers to increase their banks during the critical months of December of 2000 and January of 2001.

The penalties impacted transportation customers because it is difficult for a gas transportation customer to schedule the exact amount of gas for delivery that it will use on any given day. Many transportation customers purchased gas in excess of their daily requirements to avoid the $10 per Mcf penalty. Customers without daily meters were confronted with a more serious dilemma because they were required to deliver gas equal to their maximum daily usage regardless of how much gas they actually used. The overall effect of these practices was to increase the gas supplies on the Columbia system. Further, while Columbia imposed penalties on its transportation customers, Columbia itself incurred no penalties or charges from any of its upstream transporters or suppliers during this time period.

Approximately one year later, in November and December of 2001, Columbia issued several nomination restriction orders[3] prompted by warmer than normal weather, low gas prices, and Columbia's limited storage capacity and injection capability.

In early February of 2001, Staff began to receive complaints from Columbia's transportation customers concerning the penalties imposed by Columbia. Staff held several meetings with representatives of Columbia, certain suppliers, and several transportation customers. A working group was formed to resolve the situation. Columbia agreed to suspend the penalties pending the outcome of the working group's efforts.

It is Staff's and Respondents' position that Columbia's Rate Schedule TS-1/TS-2 does not provide for flow orders or balancing service restrictions. Staff further argues that Columbia's tariff does not provide for nomination restriction orders.

On July 11, 2002, Columbia filed a Motion Requesting Approval of Offer of Settlement stating that the proposed settlement reflects a balancing of many important interests involved in this proceeding, and would resolve the issues in this case. According to the terms of the proposed settlement, a copy of which is attached to this Report as Attachment A, Columbia agrees to withdraw its Petition and VIGUA agrees to withdraw its Answer and Cross Petition without admitting or denying the allegations in their respective filings.

[3]Nomination restriction orders are the opposite of a flow order or BSR in that the purpose of a nomination restriction order is to limit a transportation customer's ability to build its volume banks.

Under the terms of the settlement, Columbia agrees to the following regarding charges and penalties:

1. Not to impose *Gas Daily* "excess volume" charges set forth in Section 3-*Banking and Balancing Service,* or $10/Mcf penalties set forth in Section 9-*Penalty for Failure to Interrupt*, of Rate Schedule TS-1/TS-2, to the extent that such charges or penalties are attributable to the customer's failure to comply with Columbia's Gas In/Gas Out Flow Order during December 2000 and January 2001;

2. To waive the $.35/Mcf excess bank tolerance penalties set forth in Section 3-*Banking and Balancing Service* of Rate Schedule TS-1/TS-2 that were imposed on excess bank balances during the period December 2000 through March 2001; and

3. Not to impose late payment penalties associated with a customer's failure to pay the charges and penalties described in (1) and (2) above.

With regard to the refund of charges and penalties, Columbia agrees to the following:

1. To refund, without interest, any charges or penalties described above that have been collected by the Company;

2. To complete the calculation and distribution of refunds no later than the first bill rendered by the Company to the customer that is at least one complete billing cycle after the issuance of a Commission Order accepting the terms and conditions of the Offer of Settlement;

3. To accomplish refunds by bill credits, except that Columbia will issue a refund check to any customer with a credit balance (following the posting of the credit) upon written request for such check from the customer; and

4. To provide to each customer the basis for the calculation of the refund to the customer.

The Respondents agree that, to the extent not paid, charges for consumption by a customer when the customer had zero banked volumes are to be paid to the Company and such unpaid amounts due the Company are to be excluded from the calculation of any refund to the customer.

Columbia agrees to exclude the costs associated with calculation, processing, and distribution of the refunds from its rates. Columbia further agrees to file with the Commission's Division of Energy Regulation a summary of the refunds made, together with a report of the cost of such refunds within 30 days after all refunds have been made.

The Offer of Settlement is subject to approval of a request by Columbia filed in Case No. PUE-2001-00587 (Phase II):[4]

1. To withdraw the modified Rate Schedule TS-1/TS-2 and Rate Schedule TS-3/TS-4 that became effective subject to refund on July 1, 2002;

2. For the Rate Schedules filed with Columbia's July 2, 2002, Motion to Amend Application to be made effective, subject to refund, for service beginning November 1, 2002 (applicable to bills rendered on and after December 1, 2002) in the event that the Commission does not issue a Final Order making such rate schedules permanent on or before November 1, 2002; and

3. For a Rate Schedule TS-1/TS-2 with the same terms that were in effect immediately prior to July 1, 2002, to be placed into effect and to remain in effect through October 31, 2002.[5]

For customers taking service from Columbia under Rate Schedules TS-1 and TS-2, Columbia will provide access to an uncorrected pulse signal starting on or before November 1, 2002. Access to the pulse signal will be without cost to the customer pending the permanent implementation of a revised Rate Schedule TS-1/TS-2 in Case No. PUE-2001-00587 (Phase II).[6] The uncorrected pulse signal will be for informational purposes only and is not to be relied upon as a substitute for the actual meter reading used by Columbia for billing purposes.

Finally, within 14 days of a Commission Order accepting the terms and conditions of the Offer of Settlement, Columbia will send a letter to customers receiving service under Rate Schedule TS-1/TS-2, explaining the terms of the Offer of Settlement.

I find that the terms of the Offer of Settlement constitute a reasonable compromise in this case. The Offer of Settlement restores the transportation customers to their previous positions and the Company has suffered no harm. The final determination of Rate Schedule TS-1/TS-2 will be made in Case No. PUE-2001-00587, scheduled to be heard in September. It should be noted that the Offer of Settlement provides that no interest is to be paid on the monies collected pursuant to the penalties imposed by Columbia. Although approximately $6.8 million in penalties was levied, less than half that amount has actually been paid by customers. Because interest would be calculated only on the actual amount paid, Staff and the parties agree that the refund should be made without interest.[7]

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[4]This request was granted by Hearing Examiner's Ruling of July 30, 2002.

[5]Columbia and the Respondents agree to support and abide by the interpretation of Rate Schedule TS-1/TS-2 made by John A. Stevens of the Commission's Division of Energy Regulation. Mr. Stevens' testimony was made a part of the record of this proceeding and is summarized above.

[6]Columbia will file a supplement to the rate schedules filed on July 2, 2002, subject to Commission approval in Phase II of Case No. PUE-2001-00587, to include customer and/or marketer access to meter pulse signals.

[7] Tr. 109, 110.

Accordingly, ***I RECOMMEND*** that the Commission accept the Offer of Settlement and dismiss this case from its docket of active cases.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fourteen (14) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Howard P. Anderson, Jr.
Hearing Examiner